



## **News Release**

### **National Labor Relations Board**

December 22, 2010

**Contact:**

Office of Public Affairs

202-273-1991

[publicinfo@nrlb.gov](mailto:publicinfo@nrlb.gov)

[www.nrlb.gov](http://www.nrlb.gov)

### **NLRB invites briefs regarding appropriate bargaining units in long-term care facilities**

The National Labor Relations Board [invites interested parties to file briefs](#) on the issue of the appropriate composition of bargaining units in long-term care facilities.

In the case under review, 15-RC-8773, the United Steelworkers, District 9, petitioned for an election to represent certified nursing assistants at a nursing home in Mobile, Alabama. The employer, Specialty Healthcare and Rehabilitation Center of Mobile, contends that, under Board law, the unit must include all nonprofessional service and maintenance employees, such as dietary aides, cooks, and clerks. The Regional Director found the petitioned-for unit was appropriate, and that decision was appealed to the Board.

In 1989, the Board promulgated a rule specifying appropriate bargaining units in the healthcare industry. The final rule was limited to acute care facilities. The Board said that it would continue to determine if proposed units were appropriate in nursing homes and other *non-acute* care facilities “by adjudication.” In 1991, the Board decided *Park Manor Care Center*, 305 NLRB 872, indicating that in non-acute healthcare facilities it would “take a broader approach utilizing not only ‘community of interests’ factors but also background information gathered during rulemaking and prior precedent.” The Board specifically noted its expectation “that after various units have been litigated in a number of individual facilities, and after records have been developed and a number of cases decided from these records, certain recurring factual patterns will emerge and illustrate which units are typically appropriate.”

The question of appropriate unit composition that is presented in this case revisits that 1991 decision. In seeking briefs, the Board majority observed that the long-term care industry has changed dramatically in the two decades since *Park Manor* was decided. Employment growth in the sector has been strong and, during the last decade, nearly 3,000 petitions for representation elections have been filed involving that industry.

The invitation to file briefs specifically asks eight questions, including what the interested parties' experience has been under the *Park Manor* decision and whether its application has hindered or encouraged employee choice and collective bargaining. The full invitation detailing the questions, as well as any briefs that are submitted, will be posted on the Agency's website, [at the top of this page](#).

In dissent, Member Brian Hayes wrote that there is little evidence that current policies are problematic and that changing them could lead to a proliferation of units in the health care industry. He also criticized the majority for inviting briefs addressing the standard for unit determinations in other industries. Doing so, in his view, tests the limits of Board authority to make law on a case-by-case basis, rather than by rulemaking, and indicates that the majority is "contemplating a broad revision of a test for determination of appropriate units in all industries under our jurisdiction---a test that has stood for at least 50 years." Member Hayes concluded that this review poses the risk of contravening "our own Act, express Congressional intent, the experience informing our health care rules, and the Administrative Procedures Act."

The National Labor Relations Board is an independent federal agency vested with the power to safeguard employees' rights to organize and to determine whether to have unions as their bargaining representative. The agency also acts to prevent and remedy unfair labor practices committed by private sector employers and unions.

###